

CUSTOMS

Assistance

Agreement Between the UNITED STATES OF AMERICA and MALTA

Signed at Valletta March 6, 2001



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MALTA

Customs: Assistance

*Agreement signed at Valletta March 6, 2001;
Entered into force March 6, 2001.*

AGREEMENT BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND
THE GOVERNMENT OF MALTA
REGARDING MUTUAL ASSISTANCE BETWEEN THEIR
CUSTOMS ADMINISTRATIONS

The Government of the United States of America and the Government of Malta,
hereinafter referred to as "the Parties",

Considering that offenses against customs laws are prejudicial to the economic, fiscal,
social, cultural and commercial interests of their respective countries;

Considering the importance of assuring the accurate assessment of customs duties and
other taxes;

Recognizing the need for international cooperation in matters related to the
administration and enforcement of the customs laws of their respective countries;

Having regard to the international conventions containing prohibitions, restrictions
and special measures of control in respect of specific goods;

Convinced that action against customs offenses can be made more effective by
cooperation between their Customs Administrations; and

Having regard to the Recommendation of the Customs Cooperation Council
regarding Mutual Administrative Assistance of December 5, 1953;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of the present Agreement:

1. the term "Customs Administration" means, in the United States of America, the United States Customs Service, Department of the Treasury, and in Malta, the Department of Customs;
2. the term "customs laws" means such laws and regulations enforced by the two Customs Administrations concerning the importation, exportation, transit, or storage of goods as they relate to customs duties, charges, and other taxes or to prohibitions, restrictions, and other similar controls respecting the movement of goods across national boundaries;
3. the term "information" means data in any form, documents, records, and reports or certified or authenticated copies thereof;
4. the term "offense" means any violation or attempted violation of the customs laws;
5. the term "person" means any natural or legal person;
6. the term "property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or an interest in such assets;
7. the term "provisional measures" includes:
 - a. "seizure" or "freezing," which means:
 - (i) temporarily prohibiting the conversion, disposition, movement, or transfer of property, or
 - (ii) temporarily assuming custody or control of property on the basis of an order issued by a court or competent authority, or other means; and
 - b. "forfeiture" means the deprivation of property by order of a court or competent authority and includes confiscation where applicable;
8. the term "requesting administration" means the Customs Administration that requests assistance;
9. the term "requested administration" means the Customs Administration from which assistance is requested.

ARTICLE 2

SCOPE OF AGREEMENT

1. The Parties, through their Customs Administrations, shall assist each other, in accordance with the provisions of this Agreement, in preventing, investigating, and repressing any offense.
2. All assistance under this Agreement by either Customs Administration shall be performed in accordance with the Party's national laws and regulations and within the limits of its Customs Administration's competence and available resources.
3. This Agreement is intended solely for mutual assistance between the Administrations; the provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 3

SCOPE OF GENERAL ASSISTANCE

1. Upon request, a Customs Administration shall provide assistance in the form of information necessary to ensure the enforcement of the customs laws and the accurate assessment of customs duties and other taxes by the Customs Administrations.
2. Upon request or upon its own initiative, a Customs Administration may provide assistance in the form of information, including but not limited to, information concerning:
 - a. methods and techniques of processing passengers and cargo;
 - b. the successful application of enforcement aids and techniques;
 - c. enforcement actions that might be useful to suppress offenses and, in particular, special means of combating offenses; and
 - d. new methods used in committing offenses.
3. The Customs Administrations shall cooperate in:
 - a. establishing and maintaining channels of communication to facilitate the secure and rapid exchange of information;
 - b. facilitating effective coordination;
 - c. the consideration and testing of new equipment or procedures; and
 - d. any other general administrative matters that may from time to time require their joint action.

ARTICLE 4

SCOPE OF SPECIFIC ASSISTANCE

1. In accordance with its national laws and regulations, the requested administration shall in particular provide the requesting administration with the following information:
 - a. whether goods which are imported into the customs territory of the requesting Party have been lawfully exported from the customs territory of the requested Party;
 - b. whether goods which are exported from the customs territory of the requesting Party have been lawfully imported into the customs territory of the requested Party and about the customs procedure, if any, under which the goods have been placed.
2. Upon request, a requested administration shall exercise, to the extent of its ability and within the limits of its available resources, special surveillance of:
 - a. persons known to the requesting Party to have committed a customs offense or suspected of doing so, particularly those moving into and out of the requesting Party's territory;
 - b. goods either in transport or in storage identified by the requesting Party as giving rise to suspected illicit traffic toward the requesting Party's territory; and
 - c. means of transport suspected of being used in offenses within the territory of the requesting Party.
3. The Customs Administrations shall provide each other, either on request or on their own initiative, with information on transactions, completed or planned, which constitute or appear to constitute a customs offense.
4. In serious cases that could involve substantial damage to the economy, public health, public security or any other vital interest of one Party, the Customs Administration of the other Party shall, wherever possible, supply information on its own initiative.
5. The Parties shall provide assistance through the use of provisional measures and in proceedings involving property, proceeds and instrumentalities, subject to these provisional measures.
6. The Parties may, to the extent permitted by their respective national laws and regulations, and consistent with any other agreement between them pertaining to the sharing and disposition of forfeited assets:
 - a. dispose of property, proceeds, and instrumentalities forfeited as a result of assistance provided under this Agreement; and
 - b. transfer forfeited property, proceeds, or instrumentalities, or the proceeds of their sale, to the other Party upon such terms as may be agreed.

ARTICLE 5

FILES AND DOCUMENTS

1. Upon request, the Customs Administrations shall provide information relating to transportation and shipment of goods showing value and disposition of those goods.
2. A requesting administration may request originals of files, documents, and other materials only where copies would be insufficient. Upon request, the requested administration shall provide properly authenticated copies of such files, documents, and other materials.
3. Unless the requesting administration specifically requests originals or copies, the requested administration may transmit computer-based information in any form. The requested administration shall supply all information relevant for interpreting or utilizing computer-based information at the same time.
4. On written request, officials specially designated by the requesting administration may, with the authorization of the requested administration and subject to conditions the latter may impose for the purpose of investigating a customs offense,
 - a. consult in the offices of the requested administration the documents, registers and other relevant data to extract any information in respect of that customs offense;
 - b. take copies of the documents, registers and other data relevant in respect of that customs offense.
5. Originals of files, documents, and other materials that have been transmitted shall be returned at the earliest opportunity; rights of the requested Party or of third parties relating thereto shall remain unaffected.

ARTICLE 6

WITNESSES

1. In connection with an offense, the requested administration may authorize its officials, whenever possible, to testify in judicial or administrative proceedings in the territory of the requesting Party as experts or witnesses regarding facts established by them in the course of their duties and to produce evidence. The request for the appearance must clearly indicate in what case and in what capacity the official is to appear.
2. Any limitation regarding the testimony of its officials shall be provided in writing by the requested administration. If such limitations cannot be respected, the requesting administration shall inform the requested administration accordingly.

ARTICLE 7

COMMUNICATION OF REQUESTS

1. Requests pursuant to this Agreement shall be made in writing directly between officials designated by the Heads of the respective Customs Administrations. Information deemed useful for the execution of requests shall accompany the request. In urgent situations, oral requests may be made and accepted, but shall be promptly confirmed in writing.
2. Requests shall include:
 - a. the name of the authority making the request;
 - b. the nature of the matter or proceedings;
 - c. a brief statement of the facts and offenses involved;
 - d. the reason for the request; and
 - e. if known, the names and addresses of the parties concerned in the matter or proceeding.

ARTICLE 8

EXECUTION OF REQUESTS

1. The requested administration shall take all reasonable measures to execute a request and shall endeavor to secure any official or judicial measure necessary for that purpose.
2. If the requested administration is not the appropriate agency to execute a request, it shall promptly transmit it to the appropriate agency and so advise the requesting administration.
3. The requested administration shall conduct, or may permit the requesting administration to conduct, such inspections, verifications, fact-finding inquiries, or other investigative steps, including the questioning of experts, witnesses, and persons suspected of having committed an offense, as are necessary to execute a request.
4. Upon request, the requesting administration shall, be advised of the time and place of action to be taken in execution of a request.
5. Upon request, the requested Party may authorize, to the fullest extent possible, officials of the requesting administration to be present in the territory of the requested Party to assist in execution of a request.
6. The requested administration shall comply with a request that a certain procedure be followed to the extent that such procedure is not prohibited by the national laws and regulations of the requested Party.

ARTICLE 9

CONFIDENTIALITY OF INFORMATION

1. Information obtained under this Agreement shall be afforded the same degree of confidentiality by the receiving Party that it applies to similar information in its custody.
2. Information obtained under this Agreement may only be used or disclosed for the purposes specified in this Agreement, including use in judicial, administrative, or investigative proceedings. Such information may be used or disclosed for other purposes or by other authorities if the supplying Customs Administration has expressly approved such use or disclosure in writing.
3. The requesting administration shall treat information received as confidential except to the extent necessary to fulfill the purposes of this Agreement. The requested administration may in particular circumstances direct the requesting administration to treat such information with a greater degree of confidentiality. The requested administration shall state its reasons for making a request for greater confidentiality.
4. This Article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the requesting Party in connection with a criminal prosecution. The requesting administration shall give advance notice of any such proposed disclosure to the requested administration and, if possible, before any judicial proceeding is initiated.

ARTICLE 10

EXEMPTIONS

1. Where a requested Party determines that granting assistance would infringe upon its sovereignty, security, public policy or other substantive national interest, or would be inconsistent with its national laws and regulations, it may refuse or withhold assistance, or may grant it subject to the satisfaction of certain conditions or requirements.
2. If the requesting administration would be unable to comply if a similar request were made by the requested administration, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested administration.
3. The requested administration may postpone assistance on the ground that it will interfere with an ongoing investigation, prosecution, or proceeding. In such instance, the requested administration shall consult with the requesting administration to determine if assistance can be given subject to such terms or conditions as the requested administration may require.
4. In the event that a request cannot be complied with, the requesting administration shall be promptly notified and provided with a statement of the reasons for postponement or denial of the request. Circumstances that might be of importance for the further pursuit of the matter shall also be provided to the requesting administration.

ARTICLE 11

COSTS

1. The Customs Administrations shall normally waive all claims for reimbursement of costs incurred in the implementation of this Agreement with the exception of expenses for experts and witnesses, fees of experts, and costs of translators and interpreters other than government employees.
2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Customs Administrations shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

ARTICLE 12

IMPLEMENTATION OF THE AGREEMENT

1. The United States Customs Service, Department of the Treasury of the United States of America, and the Department of Customs for Malta shall:
 - a. communicate directly for the purpose of dealing with matters arising out of this Agreement;
 - b. after consultation, issue any administrative directives necessary for the implementation of this Agreement; and
 - c. endeavor by mutual accord to resolve problems or questions arising from the interpretation or application of the Agreement.
2. Conflicts for which no solutions can be found will be settled by diplomatic means.

ARTICLE 13

APPLICATION

This Agreement shall be applicable to the Customs territories of both Parties as defined in their national legal and administrative provisions.

ARTICLE 14

ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force on signature.
2. Either Party may terminate this Agreement at any time by notification through diplomatic channels. The termination shall take effect three months from the date of notification of termination to the other Party. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.
3. The Customs Administrations shall meet in order to review this Agreement as necessary, or at the end of five years from its entry into force, unless they notify one another in writing that no review is necessary.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Valletta, in duplicate, this sixth day of March, 2001, in the English language.

Deborah G. Bolton
DEBORAH BOLTON, CHARGE D'AFFAIRES
U.S.
FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

Alfred J. Pace
ALFRED J. PACE
COMPTROLLER OF CUSTOMS
FOR THE GOVERNMENT OF
MALTA: